

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

RAPHAEL GARCIA, JR.

v.

UNITED STATES OF AMERICA

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§

2:13-CV-0019

**ORDER ADOPTING REPORT AND RECOMMENDATION and**  
**DISMISSING WITHOUT PREJUDICE MOTION TO VACATE SENTENCE**

Came for consideration the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody filed by defendant RAPHAEL GARCIA, JR.. On December 30, 2015, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending defendant's motion to vacate be dismissed without prejudice, but further recommending that the Judgment in the criminal case be reinstated to allow defendant GARCIA an opportunity to file an out-of-time appeal. As of this date, neither party has filed any objections to the Magistrate Judge's Report and Recommendation.

The undersigned United States District Judge has made an independent examination of the record in this case. The Magistrate Judge's Report and Recommendation is hereby ADOPTED. Accordingly, the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody filed by defendant is hereby DISMISSED without prejudice. The Court will reinstate Garcia's judgment of conviction on its docket in Cause. No. 2:11-cr-58 so that defendant Garcia may prosecute a direct appeal.

IT IS SO ORDERED.

ENTERED this 20<sup>th</sup> day of January 2016.

  
MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE